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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1926.

No. 412

BEDFORD CUT STONE COMPANY, et al.,
Appellants,

vs.

JOURNEYMEN STONE CUTTERS' ASSOCIATION OF NORTH AMERICA, et al.,
Appellees.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

APPELLANTS' BRIEF

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Supreme Court of the United States

BEDFORD CUT STONE CO. *et al.*, Appellants, against JOURNEYMEN STONE CUTTERS ASSOCIATION OF NORTH AMERICA *et al.*, Appellees.	October Term, A. D. 1926.

APPELLANTS' BRIEF.

Complainants appeal from a final decree of the Circuit Court of Appeals, for the Seventh District Court, affirming an order of the District Court, for the District of Indiana, which dismissed the bill of complaint herein.

Twenty-four producers of Indiana limestone filed their verified bill of complaint in the District Court of Indiana in October, 1924, seeking an injunction and damages against the Journeymen Stone Cutters Association of North America and certain local stone cutters' unions, and certain of their officers. On November 13, 1924, the District Court denied a motion for a preliminary injunction. On October 28, 1925, the Circuit Court of Appeals affirmed the order (9 Fed. [2nd] 40). By stipulation (pp. 49-50) the affidavits on the preliminary injunction were made the testimony for final hearing. On April 21, 1926, the District Court dismissed the bill. On May 14, 1926, the Circuit Court of Appeals affirmed the dismissal (pp. 203-205) in reliance upon its previous decision in 9 Fed. (2nd) 40.

Brief Statement of Case.

Complainants' trade is 75 per cent. interstate. Down to 1921 they contracted with defendant unions as to the employment of men for the production of stone in the Bedford District of Indiana. In 1921, being unable to agree on a labor contract for the future, a strike followed. Complainants thereupon reorganized their working forces, established new and independent unions, and have since been producing stone under contracts with these new unions. Defendants now seek to compel complainants to breach existing labor contracts with the independent Bedford unions, and to resume the old relationship with the defendant unions; finding complainants' production forces beyond the reach of their activity, they have obstructed the distribution and installation of the complainants' products at widely scattered points in different States throughout the country by ordering their members in the employ of complainants' customers to strike against complainants' products.

Summary of Pleadings.

Par. 1. Describes corporate organization and business of each complainant and alleges that seven are merely quarriers and the other seventeen are both quarriers and contractors or merely contractors.

Ans.: Admitted.

Par. 2. Each complainant employs upwards of forty employees, has invested over $60,000 and makes annual sales of over $100,000. Over 75 per cent. of the sales of each are interstate. The aggregate investment is about $6,000,000 and the annual aggregate sales about $15,000,000.

Ans.: Admitted.

Par. 3. Complainants constitute all but three of the producers of cut stone in the Bedford-Bloomington District not working under agreement with the defendant union. Shea & Donnelly, one of these three, is not included as complainant because it already has an injunction from the District Court for the Eastern District of Missouri and from the District of Indiana enjoining acts of the same character as herein described, and because said company has been excepted from overt acts of the defendants by reason of said injunction.

Ans.: Substantially admitted, except it is denied that Shea & Donnelly injunction was granted on account of same acts as described in this case.

Par. 4. Defendant Journeymen Stone Cutters Association of North America, known as the "General Union" or "G. U.," is a voluntary association of 5,000 members, divided into 150 locals in different States, and engaged in occupations as stone cutters, planermen, lathemen, carvers, etc. Defendant local unions in the Bedford District are also described and the official connections of the individual defendants.

Ans.: Admitted that "General Union" is a voluntary association composed of a total membership of about 3,000 and 150 local unions situated in the United States, as per list annexed to the Answer, and that the members are engaged in the crafts described. The citizenship, residence and official positions of each of the defendants is admitted as alleged.

Par. 5. The G. U. claims that employees of the complainants working at the occupations over which the union claims jurisdiction are working in opposition to the G. U., and that such workmen, their employers and their products are unfair. The sole basis for said claim is that said employees are not members of the G. U.

Ans.: Deny that they have ever called complainants or their employees or products "unfair" or have circulated lists to that effect, but admit that they refuse to work upon complainants' products made by laborers eligible to membership in the defendant unions.

Par. 6. Amount in dispute as to each complainant exceeds $5,000, exclusive of interest and costs.

Ans.: Denied.

Par. 7. None of the defendants have been employed by the complainants and none of the complainants have had any contractual relations with defendant unions for over three years.

Ans.: Substantially admitted.

Par. 8. Indiana limestone is quarried and fabricated for construction purposes. The process of quarrying consists in cutting the stone from the earth, and most of the quarries thereafter saw it into appropriate sizes, and part of them plane it. Part of the stone is shipped to buildings where it is fitted, trimmed, and set in place, and the balance is sold to contractors to be fabricated.

Ans.: Admitted.

Par. 9. Cut stone contractors fabricate the stone after it is quarried, which is the process of planing, cutting, carving, lathe turning, etc., and they secure the rough stone either from their own quarries or by purchase from others.

Ans.: Admitted.

Par. 10. Each of the complainants who are quarriers employ sawyers, and each of them, except the Crescent, Empire, Mathers, Monroe County and Star, employ planermen, lathemen and other classes of workmen over which

the defendant union claims jurisdiction. The cut stone contractors employ planermen, lathemen and stone cutters over which the union claims jurisdiction.

Ans.: Admitted.

Par. 11. About 75 per cent. of complainants' product is sold in the rough, or semi-finished state, to stone contractors and requires the services of lathemen, planermen, stone cutters, carvers and also fitters at the building to make it salable and usable. Twenty-five per cent. of the product of the complainants is fabricated by complainants who are contractors, and thereafter sold to builders, owners and architects for building construction, but such fabricated stone requires the services of stone cutters and fitters at the building before it can be utilized. All of the rough stone is sold as a commodity, and complainants do not assume any obligation for further fabrication or installation, but merely supply the material wherewith the purchaser does such work.

Ans.: Neither denied nor admitted.

Par. 12. Eighty per cent. of the total output of Indiana limestone is produced by complainants and Shea & Donnelly, and about 20 per cent. by so-called union concerns working under agreement with the defendant union. About 98 per cent. of complainants' product is sold to customers outside of the State of Indiana. About 75 per cent. of the product of complainants' quarries is sold in the rough, sawed or semi-finished, to stone contractors outside of Indiana, and about 25 per cent. is finished by the quarrymen or sold to contractors, complainants herein, and 98 per cent. of the products of complainant contractors is sold in interstate commerce.

Ans.: Neither denied nor admitted.

Par. 13. Indiana limestone is produced exclusively in the Bedford-Bloomington District, and the total output is about 12,000,000 cubic feet, having a market value of $20,000,000, of which Shea & Donnelly produce about 5 per cent.

Ans.: Admitted.

Par. 14. Said limestone comes into interstate competition with the product of union quarriers and contractors which produce about 20 per cent. of the total, and also with other kinds of natural stone and substitutes like artificial stone which is produced in unionized concerns working under agreement with the stone cutters' union. One of the purposes of the combination herein set forth is to force purchasers to substitute the products of the union concerns or other kinds of materials for complainants' products.

Ans.: Admits that the competition exists and that the principal producers of artificial stone are unionized and are located outside of Indiana.

Par. 15. Prior to 1921 complainants were working under written agreement with the defendant union, which with certain extensions expired April 31, 1921, and since then have been operating under agreements with unions having no affiliation with defendant unions, which agreements do not expire until some time in 1925 and 1926 respectively. Since 1921 there has not been any dispute or strike between complainants and their employees and their unions, and they are all working on a basis of mutual satisfaction.

Ans.: Admitted, except as to the expiration dates of the agreements between complainants and their employee unions. Also alleged that said unions are owned by complainants.

Par. 16. Most of the stone cutters throughout the United States outside of Indiana, and particularly in the largest industrial centers, are members of the G. U., and in most of these centers building construction is conducted on the closed shop basis, where it is the practice of all trades to join in sympathetic strikes against the employment of non-union men in any trade. The business of over half of the stone contractors outside of Indiana is on a closed shop basis, employing members of the defendant unions exclusively.

Ans.: The practice of sympathetic strikes is denied, and it is alleged that only one-fifth of stone contractors are unionized, and denied that contractors cannot do business without consent of union, but the allegations of this paragraph of the complaint are otherwise admitted.

Par. 17. The stone cutters' union and its officers and members are engaged in a combination to prevent the complainants from selling their product in interstate commerce because they do not agree to employ members of said union exclusively, and also knowingly and wilfully to coerce complainants to breach the agreements under which they now operate with their employees.

Ans.: Denied.

Par. 18. In furtherance of said conspiracy, defendants have done the following:

A. They have inserted a provision in the union constitution that any member working on stone cut by men working in opposition to the union shall be automatically suspended, and they advertise that the employees of the complainants are so working in opposition to the union.

Ans.: The constitution provision is admitted.

B. They have written notices to customers or complaints that no union members will work on stone not recognized as fair, meaning complainants.

Ans.: Denied.

C. They have declared orally and in writing that complainants and their product are unfair because worked on by men working in opposition to the union, and have published circulars and lists of producers which, expressly or by implication, classify complainants as unfair, and they have threatened that any architect, building contractor or owner who attempts to purchase or use complainants' materials will suffer labor troubles through a strike of stone cutters employed by them on buildings or in shops where said materials are to be further fabricated or used.

Ans.: Denied, except that defendants admit they have "declared that stone unfair which is produced by complainants by labor eligible to membership in the defendants' unions."

D. They have instigated and joined in and have threatened to instigate and join in strikes of stone cutters and other craftsmen on buildings in States outside the State of Indiana because materials of complainants were there being used.

Ans.: Admit only that they have "simply refused to work upon that class of stone."

E. They have instigated and joined in and have threatened to instigate and join in strikes of employees of cut stone contractors and carvers who attempted to have work done upon stone produced by complainants.

Ans.: Admit only that they "have simply ordered members of the defendant unions to cease work upon such class of stone."

F. They are attempting by strikes and the fear thereof to compel purchasers and prospective purchasers to refrain from purchasing materials of complainants.

Ans.: Denied.

G. They are attempting wilfully to induce and compel complainants to violate and breach contracts under which they are working with their present employees and their unions.

Ans.: Denied.

H. They have attempted to induce employees, contractors and carvers to breach contracts to work on products of complainants.

Ans.: Denied.

I. On July 7th the International Union issued a notice to all local unions and members, effective August 1, 1924, directing its members not to work on stone "that has been started—planed, turned, cut or semi-finished—by men working in opposition to our organization." The order further stated that a convention of the union had laid down the rule that the "members were to rigidly enforce the rule to keep off all work started by men working in opposition to our organization, with the exception of the work of Shea-Donnelly, which firm holds an injunction against our association."

Ans.: Admitted.

J. Complainants have outstanding contracts for the sale of stone which are placed in jeopardy by reason of these acts, and within the last few weeks interferences have taken place with the fabrication, carving and installation of stone in the States of Colorado, Illinois, New Jersey, Minnesota, Michigan and Indiana, and the president of the G. U. has announced that the rule against handling stone produced by complainants is to be promptly enforced in every part of the country without discrimination, except as to Shea & Donnelly, which is working under protection of an injunction.

Ans.: Denied, except it is admitted "that the president of said general unions has announced that the rule against handling of that class of stone, herein repeatedly described and produced by complainants is to be promptly enforced in every part of the country."

Par. 19. Customers who otherwise would purchase complainants' products are deterred from doing so for fear of strikes in their establishments or building operations, with the result that complainants have each of them been similarly and irreparably injured in excess of $5,000, exclusive of interest and costs.

Ans.: Denied.

Summary of Important Admissions.

Prior to 1921 complainants worked under a written agreement with the defendant union, and since then have been operating under agreements with unions having no affiliation with the defendants, and there has been no strike or dispute between them or their employees.

None of the complainants employ any of the defendants, and none of them have had contractual relations with the defendant unions for over three years.

The defendants have written a provision into their constitution as follows: "No member of this Association shall cut, carve, or fit any material that has been cut by men working in opposition to this Association. Any member violating this article shall become automatically suspended." Defendants further admit that they have "declared that stone *unfair* which is produced by complainants by labor eligible to membership in the defendant unions"; that they have "refused to work upon that class

of stone"; and that they have "ordered members of the defendant unions to cease working upon such class of stone."

They admit also the issuance, on July 7, 1924, of a letter addressed to all the local unions and members of the General Union, stating that, after August 1, 1924, the members are "to refrain from working on any work that has been started—planed, turned, cut, or semi-finished—by men working in opposition to our organization," with the exception of Shea & Donnelly. This circular further stated that the previous convention of the union had given the members permission to work on such material in order to bring about a settlement with complainants, but upon the understanding that, if there was no settlement, "our members were to rigidly enforce the rule to keep off all work started by men working in opposition to our organization, with the exception of the work of Shea-Donnelly, which firm holds an injunction against our Association." It is further admitted "that the President of said General Union has announced that the rule against handling of that class of stone herein repeatedly described and produced by complainants is to be promptly enforced in every part of the country."

Most of the stone cutters working on buildings throughout the United States, outside of Indiana, where this product is used, are members of the defendant union, and, in most industrial centers, building construction is conducted on the closed shop union basis.

Evidence Not Covered by Admissions in Answer.

The Official Journal of the stone cutters (p. 51) shows that determined efforts are being made to enforce this rule against complainants (pp. 52-61). The president reports that "we still find our men working on scab cut stone

that comes in from the Belt in these same localities. Now this condition has to stop" (p. 52). "There will be some cards revoked if this condition continues" (p. 52). "All hands off scab cut stone" (p. 52). "We are pleased to note that several locals have complied with the request asked of them to refrain from working on unfair cut stone, and they are only living up to their constitution, which is nothing more than we expect from every local and every individual member of the general union" (p. 53). "The law itself states very plain the penalty for any member violating this law. So refuse to work on stone started by men working in opposition to you" (p. 53). "In March Journal we again called attention to our men working on scab stone and tried to make it as plain as possible so no one could say he had not seen the order or did not understand it" (p. 54). "I went there and addressed our members in joint session on the conditions in the Indiana Belt and the result of our men working on scab stone. They agreed to abide by the order to refuse to work on scab stone" (p. 55). "I told them in person that they could not start carving jobs where the stone cut and planed was done by men working in opposition to our Association" (p. 55). "Again in the April Journal you will note I warned the membership against working on scab cut stone" (p. 55). "I stopped at Baltimore to make plain the organization's stand on men working on scab cut stone, to both the employers and the men" (p. 55). "I went to Louisville, Kentucky, where a special meeting was called, and I addressed our members on general conditions and the stand taken by our Association on scab cut stone" (p. 55). "You will lose that card just as soon as you are found violating the Board's order" (p. 58). "We are ready and willing to stop any of our members that are found violating the general order from the Executive Board" (p. 60).

The final order against working upon this material

started first with the instructions of the October, 1923, Convention of the International Union to stop members working on complainants' material unless an agreement was secured (p. 175). Failing this agreement, the Executive Committee on June 27th directed that action be taken, and on July 7th the order set forth in the complaint (par. 18, subd. H) was issued, to take effect August 1, 1924 (pp. 175-176, 59-60).

Instances of Interference.

The record gives illustrations of difficulties caused customers of complainants by enforcement of the union order forbidding its members from handling complainants' products (pp. 61-157).

Among the places where trouble has arisen on account of the defendants' combination are Chicago (pp. 70-81, 145-147, 156-157, 112), Denver (pp. 83-144), Lansing, Michigan (pp. 150-154), Atlantic City (pp. 61-62), Cleveland, Ohio (p. 112), Harrisburg, Pa. (pp. 63-64), Elgin, Illinois (pp. 145-146), Tulsa, Oklahoma, and Battle Creek, Michigan (p. 112), Kokomo (pp. 81-83, 148-149), Upland, Peru (p. 149), Valparaiso (p. 155), Muncie and Indianapolis, Indiana (p. 112). These instances show attacks upon the complainants' products as "unfair" or "scab."

That the direct, necessary and intended effect of the activities of the Union, its members and officers in this matter was to restrain the interstate trade of the complainants is shown by the contemporaneous declarations of the president in the May journal, 1924 (Record, p. 56), as follows:

> "The natural stone industry needs all the natural advantages it can possibly get, as there are so many kinds of substitutes to take the natural stone's place in the building material market, that it behooves the natural stone employers to do their

> utmost to see that *no handicap* is in its way, and *it is a well known fact* that when *any material is known to have labor grievances,* it *retards that material in the building market, as the building public do not want the stigma on their building that it was built by 'unfair labor,'* and they are also *afraid of stoppage of work and unnecessary disputes while their building is in course of construction,* and no one can blame them for that."

And again (Record, p. 55):

> "I went to New York City, and went to see a few *carving contractors,* myself and E. B. Member Wall; and I told them *in person* that they could not start carving jobs where the stone cutting and planing was done by men working in opposition to our association. One of them had a large job of carving at the time; but the job would not be ready for carvers for six months then."

That the expected results followed is shown in the testimony of B. P. Crowe, the general manager of W. McMillan & Son, complainant, one of the largest producers of this stone in the trade whose operations covered the entire country (Record, p. 149):

> "Affiant further says that in addition to the specific instances of interference with the work of the customers of this affiant's said company as hereinbefore mentioned, the salesmen for this company have reported that their customers and prospective customers have frequently expressed fear of *labor troubles* in case they purchased stone from this affiant's said company on account of the orders and actions of said general stone cutters' Union in refusing to work thereon and said conditions still exist."

Defendants' Testimony as to Purpose.

The objection is not to the *material per se*, but to the fact that it is made by rivals and its use will mean patronage and encouragement for complainants. The purpose is stated by the union officials in their testimony before the Colorado Industrial Commission, August 26, 1924, when considering a strike against a customer in Denver for purchasing material from one of these complainants (pp. 110-117).

This Colorado testimony by this official of the stone cutters' union relates to acts done in Denver in furtherance of the union order, effective August 1st, and included the following:

First, as to the reason for these strikes against customers:

> "A. No, sir, it is a fight between the stone cutters and the Bedford Stone Club, the bosses" (p. 114).
>
> "A. As I understand it, we have what we call unfair firms in the stone belts in Indiana. * * * We have never gotten an agreement with them; they refuse to meet with us, and at the 1921 Convention we decided to go ahead and cut this stuff, but it was understood that we were to come off of it when we were called off, but there was no date set when this call was to be made; it was generally supposed it would be the 1st of May of this year, but it wasn't. Our executive board met in Indianapolis in June and decided on August when we was to come off of this work" (p. 110).

The union attitude toward the local contractor, who is complainants' customer, is then discussed:

> "Q. In other words, it is an effort of your organization to kill the local organization (employer)? A. Yes, sir.

Q. In order to do that, you would force a man in Denver, with whom you had no trouble, to either go busted or quit employing union men? A. Well, that has been threshed out here before. It is generally understood we have nothing against this local man at all. We are only acting under orders from our International.

Q. He would either have to go broke on his contract or employ non-union men? A. Yes, sir.

Q. And there is no way he can fix it up with you, locally? A. No, sir; the local has no jurisdiction.

Q. Your committee met in June and decided to call this strike, you say? A. I think it was June" (p. 114).

Customers attacked in order to reach producers in other States:

"A. It affected the local man. We was trying to affect the Bedford people through the local man.

Q. That is, bust him up in business and make the Bedford man feel sorry about it? A. Not necessarily. I don't think the Bedford man would let him do that. I think the Bedford man would come to his rescue before he went busted" (p. 114).

"Q. So the only person injured would be your own local man, who is your employer, and your personal friend, is that it? A. In a way. If it was finished that way, he would be the only one hurt. We are not fighting on this Denver man. We are trying to force these people through the other subcontractors all over the country" (p. 115).

"Q. You are trying to force the Bedford to employ members of your union to do this work? A. Yes, sir.

Q. And irrespective of who it hurts, that is the object? A. That is the object. It is done from our headquarters.

Q. Mr. Fernald, or anybody else, they have got to get out of the road, that is the object? A. We are trying to gain this point, irrespective of who it hurts" (p. 117).

"Q. And you are going to stop work on that and you only injure him, is that correct? A. I expect that is correct, yes.

Q. And that is the impression you want to leave with me? A. It is like I said before, we are centering the fight against the Bedford people, and, of course, we are not working for them, personally. We can't go on the side against them, we can't walk out of their shop because there is none of our men in their shop.

Q. If Reilly hated you and went out and licked me, it would be a kind of a moral lesson to you, is that it; in other words, if there is any explanation of that situation from your standpoint, I want it? A. That is all.

Q. And you are willing to leave that impression stand that way with me? A. Yes, sir.

Q. If there is any explanation of that, I want it. A. Well, I don't know of any further explanation that I can make" (p. 116).

Local unions are forced by the International to so act:

"Q. To sum this up, Mr. James, here is the point, your people are members of this local union. The local union, of course, is under the jurisdiction of the International Union, and you have your orders from your International Union? A. Yes, sir.

Q. And you people have no choice in the matter, you are just complying with the orders from the International? A. We have no choice whatever.

Q. Probably, if it was let up to you people here, knowing this employer as you do, why, your organization here, local organization, would not strike on this man? A. I don't believe we would, no.

Q. But you have got to follow the orders of your International organization? A. Yes, sir" (p. 117).

Places where trouble has arisen:

> "Q. Do you know of your own knowledge whether members of your organization are out in other States? A. Yes, sir.
>
> Q. Have your people that information? A. Yes, sir.
>
> Q. Could you name some of the States where they have refused to work on account of this stone? A. They refused to work on it at Battle Creek, Michigan; Muncie, Indiana; Indianapolis, Indiana; Chicago, Illinois; Tulsa, Oklahoma; Cleveland, Ohio. Them is the places I have information from.
>
> Q. Did you get that information through your journal? A. No, sir, through personal correspondence with our International Secretary" (p. 112).

President Mitchell of the International Union also testified:

> "Q. What is the condition at the present time throughout the country in regard to this order? A. Our men are living up to this order; if they are not living up to this order I want the places pointed out and I will see that they do."

These activities do not constitute *local strikes* for *local purposes,* such as were involved in the *Herkert & Meisel* and *Coronado* cases, cited in the Court below. The sole purpose of causing strikes against customers upon buildings in cities outside of the State of Indiana was because those customers had purchased and were using complainants' "scab" and "unfair" products. Because of "a fight between the stone cutters and the Bedford Stone Club, the bosses" (p. 114), and because the unions call the complainants "unfair firms in the stone belts in Indiana" (p. 110), they "are centering the fight against the Bedford people" (p. 116). The defendants are "trying to force these people through the other sub-contractors all over the country" (p. 115) in order to compel them to employ

union men in Indiana, "and irrespective of who it hurts" (p. 117), and the entire membership and local unions are acting solely because they are forced to follow the orders of the International organization (p. 117). It was stated in the official journal of the union that union men in the stone belt in Indiana "are in no position to get their former employers to meet with them to consider drawing up an agreement, so they are dependent on their brother union men working on the outside where the unfair cut stone and semi-finished stone is shipped to" (p. 53). In another issue of the official journal, the officials reported that they had gone through the various towns in the Indiana stone belt district, assuring the union men there "that their Brothers in the outside locals were now going to support them by refusing to work on any scab cut stone coming from the Belt" (p. 54).

Thus we have a widespread artificial scheme, directed by a national organization, which requires all stone cutters employed *by complainants' customers*, everywhere in the United States, to strike against the unfair and scab products of the complainants. These strikes took place upon buildings or in shops to which the products are shipped in interstate commerce, and their purpose is not local, but to control the situation in another State through their interference with existing interstate trade.

POINT I.

Defendants' combination violates the Sherman Anti-Trust Law.

It is not necessary for complainants to show any common law combination to injure or maliciously interfere with their business.* On the contrary, they invoke the provisions of a drastic statute, whereunder every artificial barrier between producer and consumer, which obstructs interstate commerce, is condemned because it interferes with the rights of the purchasing public. This combination of the defendants, which follows the products of the complainants into various States and industrial centers for the purpose of burdening or hampering their use, comes squarely within the spirit and letter of this drastic law.

The Sole Direct Purpose is to Restrain Interstate Commerce.

The avowed purpose is to force complainants to resume contractual relations with defendant union for the production of stone at Bedford, Indiana. The only connection between these scattered points of consignment where the strikes take place, and the place of production, where all

* Under the common law, most courts have held combinations of this character to be illegal (*Purvis* v. *Local 500*, 214 Pa. 348, 63 Atl. 585; *Shine* v. *Fox Brothers Manufacturing Co.*, 156 Fed. 357 [C. C. A., 8th Cir.]; *Huttig Sash & Door Co.* v. *Fuelle*, 114 S. W. 1001 [Mo.]; *Irving* v. *Joint District Council*, 180 Fed. 896; *Newton* v. *Erickson*, 70 Misc. [N. Y.] 291; *People* v. *McFarlan*, 43 Misc. [N. Y.] 591; *Booth* v. *Burgess*, 65 Atl. [N. J.] 226; *Purington* v. *Hinchliff*, 76 N. E. 47; *Carlson* v. *Carpenters Contractors Association*, 303 Ill. 331; *Moores* v. *Bricklayers*, 21 Weekly Law Bulletin, Ohio, 665 [Taft, J.]; *Piano Workers* v. *Piano Co.*, 24 Ill. App. 35; *Loizeaux Co.* v. *Carpenters*, Union County, N. J., August, 1923), and a few others have held the contrary (*Parkinson* v. *Building Trades Council*, 98 Pac. 1027 [Cal.]; *Bossert* v. *Dhuy*, 221 N. Y. 342).

is peace and harmony and where defendants seek to force a change, is interstate commerce. How can the means adopted, viz., obstruction of fabrication and installation by customers, accomplish the avowed end of affecting conditions in the Indiana quarries, except by restraining commerce, and why do defendants adopt this means to attain this end, except they calculate and intend to restrain such commerce? If commerce did not exist between the point of production and the point of attack the defendants would not be doing as they are doing. The object of the attack is not the customers against whom they have no grievance, but the trade and commerce between those customers and complainants. It is not the material which is objectionable, but the fact that its use means encouragement and patronage for complainants and a continuance of their commerce.

It is not a case of incidental injury or restraint. Defendants frankly say they have exhausted the resources of argument, and are finally obliged to resort to this form of pressure. Having failed to destroy the productive organization they turned their attention to sales and distribution. The sole, direct and immediate purpose, whether you call it an end or a means, is to restrain trade, so that, as a secondary result, complainants will be forced to change production conditions. The defendants do not seek a benefit which incidentally restrains trade, but directly and unlawfully restrain trade in order to obtain a benefit as a secondary result. The benefits are to be obtained in Bedford only by the pressure of the injury caused through the unlawful restraint.

Along the channels of interstate commerce are dealers, contractors and others through whose hands goods must pass en route to the public. Attempts to penalize or hamper these dealers, if they purchase a prescribed class of

goods, deprives them of their freedom of choice and blockades the flow of these articles to the public markets. That is defendants' aim. They seek to cause a backwater of the normal current of commerce by the erection of barriers at the outlet of the stream, and rely upon the alarm and injury created by that backwater to dislodge complainants from their position.

The facts, no essential of which is contradicted, present a clear violation of the Sherman Anti-Trust Law under authorities which are indistinguishable.

> *Brims* v. *U. S.* (Supreme Court, Nov. 23, 1926).
> *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443.

The combination in the case at bar is fundamentally the same as the combination involved in the case of *United States* v. *Brims*, in which case, this Court reversed the Circuit Court of Appeals for the Seventh Circuit, and held the combination to be a violation of the Sherman Anti-Trust Law. In the *Brims* case, an arrangement was entered into between the carpenters and the producers of building trim in Chicago whereby the unions agreed not to work upon non-union trim, the purpose being to protect the local union producers and their union employees from the competition of the non-union mills paying lower wages. In the case at bar there is no proof offered as to the part which the union producers played in connection with the combination, but it clearly appears that the complainants' product competes with the union product and that the combination is acting for the purpose of benefiting both employers and employees in the union establishments, thereby making the union workers and the union producers, boycott-beneficiaries. Where the purpose and results are identical, it surely can make no difference, under the statute, whether the employer actively joins with his

employees in boycotting the non-union producers, or merely acquiesces and receives the benefits. It has long since been settled that the statute applies to combinations of workers as well as of employers (*Loewe* v. *Lawlor*, 208 U. S. 288), and the statute has been repeatedly applied to situations where the unions alone were active in prosecuting the boycott (*Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443).

The case of *Duplex Printing Press Co.* v. *Deering, supra*, is also based on certain fundamental facts which are present in this case: A combination of workers refusing to work on or in connection with certain commodities received through interstate commerce in order to force the unionization of a producer in another State.

There is no doubt that commerce can be unlawfully restrained by interfering with the product before it starts on its interstate journey, or after it arrives. This has been expressly held.

U. S. v. *Brims* (*supra*).
Duplex Printing Press Co. v. *Deering*, 254 U. S. 443.
Loewe v. *Lawlor*, 208 U. S. 274.
Boyle v. *U. S.*, 259 Fed. 803 (C. C. A., 7th Cir.).

The cases hold that the means of restraining trade may be otherwise lawful and innocent (see *Loewe* v. *Lawlor*, 208 U. S. 274, quoting *Aikens* v. *Wisconsin*, 195 U. S. 194). In the *Duplex* case the means were strikes against customers.

A good motive or an entire absence of malice is no defense if the object is to restrain commerce.

Thomson v. *Cayser*, 243 U. S. 66.
Sanitary Mfg. Co. v. *Missouri*, 226 U. S. 20.
Int'l Harvester Co. v. *Missouri*, 234 U. S. 199.

ATTACK IS ON COMMERCE AND NOT ON PRODUCTION.

For the purpose of argument, we concede that local restraint of, or interference with, production does not constitute a restraint of interstate commerce, even though the articles to be produced are destined for interstate commerce.

> *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344.
> *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457.

If the case at bar presented a local attack, on production, as, for instance, was the situation in 1921 when the strike was on between complainants and defendants, these cases might be applicable, but such is not the case. Complainants have an harmonious production organization which defendants are not now attacking, but instead defendants are following the products of this harmonious organization into the markets of the nation whither they have flowed through the current of interstate commerce and after they have been purchased and received by customers. That attack on the distribution of complainants' product, for the purpose of curtailing complainants' liberty to engage in such commerce, brings the facts within the cases of *Duplex Printing Press Co.* v. *Deering*, *Loewe* v. *Lawlor* and *U. S.* v. *Brims, supra*. The very case of *United Leather Workers* v. *Herkert & Meisel Trunk Co., supra,* relied on by the lower Court, clearly points this distinction:

> "In Loewe v. Lawlor, 208 U. S. 274, 52 L. Ed. 488, 28 Sup. Ct. Rep. 801, 15 Ann. Cas. 815, and in Duplex Printing Press Co. v. Deering, 254 U. S. 443, 65 L. Ed. 349, 16 A. L. R. 196, 41 Sup. Ct. Rep. 172, members of labor unions having a controversy with their employers *sought to embarrass the sale by their employers of the product* of their manufac-

> ture in other states by boycott and otherwise. They were held guilty of a conspiracy against interstate commerce because of their palpable intent to achieve their purpose by direct obstruction of that commerce."

See also:

Anderson v. *Shipowners* (decided Nov. 22, 1926).

We submit the attack in this case is not on production, but is on the interstate distribution, sales and commerce of the complainants by making unusable and unsalable the merchandise produced by the harmonious working organization of employers and employees at Bedford. This result is to be accomplished by hampering and obstructing customers in their attempted use of the purchased article. Here are all the elements of an interstate boycott in violation of the anti-trust laws.

POINT II.

The defendants are seeking breaches of contracts.

The complainants are working under employment contracts which expire in 1925 and 1926, and their relations to their employees are harmonious (par. 15, Complaint, p. 68). The defendants seek to have them throw over these contracts and substitute a contract with defendants. This is undenied. Such a combination to induce a breach of contract is unlawful.

> *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229.

Defendants have also induced breach of other contracts (pp. 78-80, 152), and are proceeding in utter disregard of the volume of outstanding contracts.

POINT III.

The complainants have not discriminated against defendants.

We submit this alleged defense is immaterial, but we deal with it at length because of the emphasis laid upon it by the defendants in the lower courts.

Down to April 30, 1921, the complainants operated under an agreement with the defendant unions. A disagreement arose in the spring of 1921 (p. 163), and, since the parties could not solve it, the producers issued a notice on March 21, 1921, stating the terms of employment which would prevail after the expiration of the agreement on May 1st (pp. 163-164). There is nothing in the notice which indicated any purpose to discharge union men, or to discontinue dealings with the union. If the union and its employee members were ready to continue on the basis stated, they could do so. Defendants say "that as a result of said action * * * all members of the said Journeymen Stone Cutters Association of North America were locked out" (p. 164).

As a matter of fact, although it is entirely immaterial, a lockout does not exist where the employer offers employment even though the terms thereof are unsatisfactory, but only where there is a complete shutdown and a refusal to employ anyone in order to force acceptance of employer's terms.

The definition of a lockout, according to the Standard Dictionary, is:

> "The shutting up of a manufactory or other place of business by the employers because of unwillingness of employees to work on terms satisfactory to the former."

See also:

Panzicri-Hogan Co., Inc., v. *Bender*, 205 App. Div. (N. Y.) 398, 199 N. Y. Supp. 887.
Matthews v. *People*, 202 Ill. 389.

Apparently it was not until this suit was started that defendants claimed there was a lockout.

In his testimony before the Colorado Industrial Commission, President Mitchell shows that it was a strike and not a lockout:

> "They refused to concede the thirty days and seemed to be very anxious to go to bat, as the term is, or a strike on the first of May. On the first of May, 1921, our men were out in most all the shops and in quite a few cities" (bottom of p. 121).

The affidavit of Drayer also supports this (p. 133):

> "On May first the union men were taken out of the shops and the operators proceeded as best they could to operate the shops."

The defendants' version as to what happened after May 1st also shows there was no "lockout" or closing up.

They show another bulletin sent out by the producers' association to its members, referring to the notice of March 21st, as prescribing conditions of employment which controlled after May 1st, and stating, "If your men are working, it must be emphatically understood that they are doing so under conditions named March 21st," etc. (p. 164).

This again shows that there was no discrimination against the union or its members down to that time, and that it was contemplated that some of the men might be "working * * * under conditions named March 21st."

About two months after the breach of May 1st the producers organized unions of their own employees and required all their employees to join them (pp. 167-170).

It was two and a half months after quitting work that the Bedford Stone Club is alleged to have issued a circular trying to keep the weak-kneed employers in line, and calling attention to the names of striking foremen (pp. 166-167).

It will be seen that none of these activities constituted a refusal to employ members of the defendant unions, but merely a requirement that all employees join the independent unions, just as employers might require employees to join an employee benefit association. The employee could also remain in the defendant union. Apparently the producers waited until the strike had continued about two months before they even took these affirmative steps to reorganize their place of business. It must also be noted that these acts, of which defendants complain, happened over three years before this suit was commenced, and that there is no suggestion of their continuance.

But, even if complainants did discriminate against union men, they were acting within their constitutional rights.

> *Adair* v. *United States*, 208 U. S. 161.
> *Coppage* v. *Kansas*, 236 U. S. 1.
> *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229.

In the case of *Hitchman Coal & Coke Co.* v. *Mitchell*, the Court went so far as to enjoin the union discriminated against from attempting by persuasion to induce employees to breach agreements not to join the union.

It is well settled that the exercise of this constitutional right of discrimination against union members does not curtail the complainants' right to restrain unlawful interference.

> *Gill Engraving Co.* v. *Doerr*, 214 Fed. 111.
> *Barr* v. *Essex Trades Council*, 53 N. J. Eq. 101.

The mere fact that a factory operates on an anti-union basis does not justify the union in question in denying that company "unrestrained access to interstate commerce," and the right to such access is not curtailed or limited by the failure of the employers to reach an agreement with the union in question. If the Government could enjoin the defendants under the anti-trust law, the complainants, who are injured by the acts in question, may likewise do so.

A reversal of the picture strengthens the argument. Let us assume that defendant union would not permit its members to work for complainants in the production of stone. Would the producers then be justified in concertedly refusing to sell stone in interstate commerce to any customer who gave a job to a member of defendant union? Would the producers' combination escape legal condemnation by paraphrasing the defendants' statement, and declaring that "If our stone is not good enough for you to start, it is not good enough for you to finish." Such a combination would be clearly illegal (*Industrial Ass'n of San Francisco* v. *U. S.*, 268 U. S. 64).

CONCLUSION.

We submit that the evidence shows an ordinary disagreement between the labor union and certain employers in Bedford in 1921, followed by efforts on the part of the defeated union to destroy interstate trade and commerce in the products of the reorganized production forces, and that, in these essentials, the case is identical with *Loewe* v. *Lawlor, Duplex Printing Press Co.* v. *Deering*, and *U. S.* v. *Brims*.

Respectfully submitted,

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